realty and personalty, even in jurisdictions applying the doctrine of ownership in equity, the vendor, it has been held, must bear the loss and not the vendee.[8]

In the principal case the fact that the loss occurred before the confirmation of the judicial sale by the Court was not held of importance so as to relieve the vendee of the burden of the loss. That has not, however, been the uniform application of the doctrine of the vendee's liability because of ownership in equity. On a master's sale, it has been held in a New York case [9] that the buyer, in equity, becomes the owner from the day the report of the sale is confirmed, and the premises are, then, at his risk even though he has not received a deed. A loss by fire, after such confirmation and before such deed, falls upon the buyer; but the Court says, "Not so where the loss is prior to the confirmation of the report." The same rule with respect to judicial sales is in force in the English chancery.[10]

S. D. C.

Spendthrift Trusts.

Editor "University of Pennsylvania Law Review and American Law Register."

Dear Sir: The interesting note in the May number of your magazine very clearly sets forth the objections to the reasoning of the Supreme Court of Pennsylvania in the recent case of *Siegwarth's Estate,* 226 Pa. 591 (1910). The decision, however, can be sustained upon grounds which apparently did not occur to either Court or counsel.

There was a gift of the estate in trust to pay the income to the beneficiaries, and if they should die without issue, then the share was to revert back to the heirs of the testator. There is authority for the proposition that the general rule that failure of issue at the death of the first taker is to be referred to the life of the testator, is not applicable to the case where the share is given in trust, and there is a direction to pay the income to the beneficiary. The form of the gift in this case indicates an intention to give a life estate. *Estate of John Mecke,* 16 Phila. 304 (1883). If this construction is correct, the case is that of a gift in trust for life, with a vested remainder in the heirs of the testator subject to be divested by the death of the life tenant leaving issue, with discretionary power in the trustee to termi-

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[8] *Clinton* v. *Hope Ins. Co.,* 45 N. Y. 454.

[9] *Gates* v. *Smith,* 4 Edw. 702.

[10] *Ex parte Minor,* 11 Ves., Jr., 559.

nate the trust and pay over the principal to the beneficiary after five years from the death of the testator. This being the case, neither the beneficiary nor his assignees had any standing to terminate the trust, the five years not having expired, and even after the five years had expired, the case would be the same, because neither could compel the trustee to exercise the discretion. The reasoning of the Supreme Court, that the mere circumstances of putting the interest in trust makes the equitable interest non-assignable is, of course, open to very serious objection and totally overlooks the real nature of a trust.

R. R. F.